

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
February 14, 2012

In the Matter of SALTER, Minors.

No. 305257
Isabella Circuit Court
Family Division
LC No. 2010-000003-NA

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Before: FITZGERALD, P.J., and WILDER and MURRAY, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right the trial court order terminating their parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i) and (g). We affirm.

The trial court did not clearly err in finding that the statutory grounds were established by clear and convincing evidence and in ordering termination of respondents' parental rights. MCR 3.977(K); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999); *In re Gazella*, 264 Mich App 668, 672; 692 NW2d 708 (2005) superseded by statute on other ground MCL 712A.19b(5). "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19(b)(5).

Respondents had five children, including one born during these proceedings. The issues that led to adjudication of the four older children included medical neglect, failure to maintain stable housing, criminal histories and arrests, and a history with Children's Protective Services (CPS). The children had significant medical and dental issues, and respondents had a history of failing to follow up on medical care for their children. There had also been ongoing issues with the cleanliness of their home, frequent moves, and concerns about the children's hygiene. Respondents had been provided with numerous services before they moved into Isabella County.

During these proceedings, they were provided with (1) couples counseling aimed at processing and accepting responsibility for the events that led to the children being placed in foster care, positive communication skills, anger management skills and positive parenting skills; (2) parenting classes and visitation at CAFÉ; (3) updated psychological testing to identify assistance that was needed; (3) homemaker services through DHS that provided bus passes, supplies for child proofing the home, assistance with public agencies to obtain assistance like food stamps, information on child care, and assistance with attending dentist and doctor appointments for the children; and (4) hands on parenting and budgeting assistance with Early Head Start along with concrete examples in respondents' home.

It took a month or so before respondents engaged in the counseling services when the four older children were removed from their care, but for the next five months their progress was fair to good. However, at that point, respondent-father was incarcerated after a probation violation involving a physical altercation with respondent-mother, and respondent-mother fired all of her service providers. She did reengage later, worked with her counselor, and continued with parenting time. However, she told her counselor that she was only engaging in counseling because she had to, and her counselor reported that respondent-mother would make some progress and then slide backward. Respondent-mother admitted to her counselor that she could not parent her children on her own.

When respondent-mother got pregnant during the proceedings, it was made very clear to her that she needed to get prenatal care from a physician. She was instructed to do this by the DHS case worker and it was brought up in open court while respondent-mother was present. The issues that led to adjudication with respect to the youngest child included respondent-mother's failure to obtain prenatal care, her cigarette smoking while she was pregnant, and respondents' failure to comply with the parent agency agreement. Respondent-mother's actions regarding her failure to obtain prenatal care for the youngest child was consistent with the medical neglect that brought the four older children into temporary care in the first-place.

In addition to the issue of continued medical neglect, respondents continued to be involved with incidents that involved the police or other authority figures. Respondents were in an incident in August 2010 that involved a knife, respondent-mother was in an altercation with an animal control officer over an issue with her dog, respondent-mother swore at and threatened the service workers and the children's physician, and the foster parents obtained a PPO against respondent-mother because of her threatening behavior.

With regard to respondent-father, he participated in services and initially gained some skills in communicating with respondent-mother. Both respondents had cognitive limitations, and their counselor stated that respondents would need support if they were together and attempting to parent their children. Visitation went well when respondents visited with the children in a structured and supported environment but were more chaotic when they did not have support. The evaluating psychologist testified regarding his concern that respondent-father was not taking responsibility for the children being removed and perceived petitioner as mistreating the family. Respondent-father did not seem to understand the significance of his failure to care for the children, stating that the children were removed from respondents' care because they missed one doctor's appointment for one of the children. Throughout the proceedings, respondents did not care for the children's medical needs, which were significant.

No evidence indicated that respondents could remedy the conditions of adjudication or provide appropriate care for the children within a reasonable time, given the children's young ages and medical needs and respondents' failure to fully participate in services.

Respondents also contend that petitioner did not make reasonable accommodations under the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq.*, for their cognitive disabilities. Generally, petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan. MCL 712A.18f; *In re HRC*, 286 Mich App 444, 462-463; 781 NW2d 105 (2009). The reasonableness of services offered to a respondent may affect the sufficiency of evidence to establish the statutory grounds for termination. *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005).

In this case, service providers testified regarding an awareness of respondents' cognitive limitations and the steps that were taken to ensure that respondents were given the appropriate level of services that addressed their limitations. The psychologist who evaluated respondents recommended that services addressing parenting skills should be done in a very concrete manner with and without hands on intervention. The case worker testified that she was cautious of not piling too much on respondents to avoid overwhelming them. The DHS homemaker stated that she discussed different parenting techniques with respondents and gave them good concrete examples. The counselor who worked with respondents in couples counseling testified that she made accommodations by going over concepts or techniques repeatedly to make certain that respondents understood them. Parenting time took place at CAFÉ and respondents were provided with hands on assistance during those visits. Respondents were accompanied to medical appointments for the children by a case worker and given the opportunity to ask any questions of the children's medical providers. The testimony at the termination hearing does not support respondents' argument that reasonable accommodations under the ADA were not provided. The trial court did not err in finding that petitioner made reasonable efforts to rectify the conditions that caused the children's removal.

Respondent-father argues that he was not given the opportunity to meaningfully participate in the services while he was incarcerated. A court may not terminate parental rights on the basis of "circumstances and missing information directly attributable to respondent's lack of meaningful prior participation." *In re Rood*, 483 Mich 73, 119; 763 NW2d 587 (2009). Nothing in the record supports respondent-father's argument that he was not given the opportunity for meaningful participation in the proceedings. In fact, the record reflects just the opposite. The service workers and the trial court were diligent in ensuring that respondent-father continued to participate in both the services and the proceedings while he was incarcerated. The case worker arranged to have a psychological evaluation done at the jail. She also contacted both respondents' counselor and the DHS homemaker requesting suggestions for any services or homework that would be beneficial for respondent-father to do while in jail. The DHS homemaker sent respondent-father a letter in jail inquiring what services were available at the jail and did not receive a response. She also called the jail to inquire about services for respondent-father. The case worker sent respondent-father the updated service plan report and treatment plan and requested that he sign and return it, but she did not receive it back from respondent-father. The DHS homemaker requested documentation from respondent-father that he was on a waiting list for services at the jail and never received it. The DHS worker sent respondent some reading material, although it was returned by the jail because it did not come

directly from a bookstore. Once respondent-father was released from jail, he started to work with the counselor he had been working with before his incarceration and continued with visitation.

Respondent-father also participated in all hearings during his incarceration. In fact, both a review hearing concerning the four older children and a preliminary hearing on the petition regarding the youngest child were adjourned when arrangements were not made for respondent-father to participate. In addition, at the first permanency planning hearing, petitioner stated that respondents had done well before respondent-father's incarceration and requested an additional three months to give respondents an opportunity to comply with the services. We find that respondent-father was not denied a right to meaningfully participate in either the services or the proceedings.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Kurtis T. Wilder
/s/ Christopher M. Murray